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From: Schmidt, Mark
Sent: Thur 1/12/2017 9:51:50 PM
Subject: Newtown Creek 1/11/17 Dispute Resolution Meeting action items - BERA

Jim,

Please see action items and other discussion categories from the Newtown Creek BERA dispute resolution meeting held on 01/11/17:

Action Items:

- EPA will send to AQ a write-up of the Reference Area acceptability criteria
- EPA will send written clarification to AQ on the use of white perch fillet data in the BERA
- AQ will send to EPA a flow chart or bulleted write-up on the interpretation process of toxicity data and confounding factors and provide a detailed presentation of the process included in the draft BERA
- AQ will send to EPA a write-up of TRV derivation process
- AQ will send to EPA a write-up of the additional responses discussed with EPA from the 01/04/17 meeting

Schedules:

- Acceptability Criteria write-up – EPA to send to AQ by 1/20/17
- Perch write-up – EPA to send to AQ by 1/20/17
- AQ will send a write-up on TRV derivation to EPA by 1/20/17
- AQ will send a confounding factor technical memo to EPA before the next technical issue meeting/call (1/26/17)
- Next technical issue meeting/call – Thursday 1/26/17 at the January Newtown Creek Meeting. The technical discussion will be conducted in a separate breakout room during the meeting (anticipate 2 hours). Exact time and call in number to be specified next week.

For technical discussion:

- Reference Area acceptability criteria
- Use of Reference Areas as individual locations for Study Area comparisons (in addition to Reference Envelope pool)
- Confounding factors – process for interpretation of toxicity studies using porewater chemistry, bulk sediment chemistry, toxicity results, TUs, and the technical basis for each of the specific confounding factors (including discussion of NAPL, mineral oil, and C19-C36)
- Use of white perch fillet data
- Selection of Fish and Wildlife TRVs

Still being disputed:

- EPA directive to give equal weight to both 28-Day and 10-Day toxicity studies
- EPA directive to use Exposure Modifying Factors (EMF) of 1 for wildlife species
- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ Date for required submittal by respondents of approvable BERA report responsive to all EPA comments
 - Michael Sivak's role as the EPA's decision maker for disputes

Other:

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ Information exchanged and meeting invitations to include all stakeholders
- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ As stated by Michael Sivak on the 01/11/17 call, the due date for submission of the BERA will be extended beyond January 23, 2017. Once the technical issues identified in the dispute letter have been resolved, either through ongoing discussions or through the dispute process, a due date for submission of an approval BERA report will be communicated to all stakeholders. Similarly, the Negotiation Period for the dispute will be extended by EPA beyond January 23, 2017. EPA will notify all stakeholders of the extension date.

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